IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 16TH NOVEMBER 2007 / 25TH KARTHIKA 1929

WP(C).No. 17538 of 2004(K)

PETITIONER:

T.A.GOPAL,
THENGUMPALLIPPARAMBIL, MEMURI P.O.,
MANJOOR VILLAGE, KURUPPAMTHARA, VAIKOM TALUK,
KOTTAYAM DT.

BY ADV. SRI.P.RADHAKRISHNAN (1)
SRI.MADHU RADHAKRISHNAN
SRI.K.S.ANIL KUMAR (VAIKOM)

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY
CHIEF SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM.

2. MANJOOR GRAMA PANCHAYATH SPL. GRADE,
REPRESENTED BY ITS SECRETARY,
MANJOOR P.O., KOTTAYAM DT.

R1 BY G.P. SMT. SMITHA
R2 BY ADV. SRI.MATHEW SKARIA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE NOTICE DATED 12.1.1999 ISSUED BY THE 2ND RESPONDENT.

EXT.P2 TRUE COPY OF THE NOTICE OF AUCTION DATED 25.1.1999 ISSUED BY THE 2ND RESPONDENT.

EXT.P3 TRUE COPY OF THE NOTICE OF AUCTION DATED 17.2.2000 ISSUED BY THE 2ND RESPONDENT.

EXT.P4 TRUE COPY OF THE AUCTION NOTICE ISSUED BY THE 2ND RESPONDENT.

EXT.P5 TRUE COPY OF THE AUCTION NOTICE ISSUED BY THE 2ND RESPONDENT.

EXT.P6 TRUE COPY OF THE REVENUE RECOVERY NOTICE ISSUED BY THE 2ND RESPONDENT.

RESPONDENTS' EXHIBITS: NIL.

TRUE COPY

P.S. TO JUDGE.

C.N. RAMACHANDRAN NAIR, J.

W.P.C. NO. 17538 OF 2004

Dated this the 16th day of November, 2007

JUDGMENT

Heard counsel for the petitioner and standing counsel for the second respondent. Petitioner is challenging demand and proceedings for recovery of arrears of loan payable by the petitioner from 1997-98 to 2003-04 in respect of a shop room taken on lease by the petitioner from the second respondent. Petitioner's case is that after expiry of the lease period, Panchayat notified the property for fresh lease in 1998 and therefore petitioner is not liable to pay rent after expiry of the original lease period. However, counsel for the second respondent submitted that petitioner not only did not vacate the building after expiry of the lease period, but filed a suit for injunction against the Panchayat from evicting him. According to him, the suit prevented others from taking the building on lease and during the pendency of the suit, and until 2004 petitioner occupied the building. Petitioner has produced no evidence to prove the date of surrender of the building to the Panchayat after expiry of the lease period. Petitioner is obviously

liable to pay rent until surrender of building to the Panchayat. Counsel for the second respondent submitted that the rent demanded is only upto 2003-04, and during the said period, petitioner was in occupation of the building. I do not find any bona fide in the petitioner's claim that petitioner is not liable to pay rent after expiry of the first lease period. In the absence of any evidence produced by the petitioner about the surrender of the building to the Panchayat and in view of the suit filed by the petitioner, nothing more is required for this Court to hold that petitioner was in occupation of the building upto 2003-04. Petitioner's continued occupation of the building prevented the Panchayat from giving the building on rent to any other party and obviously Panchayat suffered loss. In any case demand of rent during the period of occupation at the same rate is quite reasonable. Since petitioner is stated to be a member of the Scheduled Caste and the business is closed, which only shows that it was not successful, I feel complete waiver of interest can be granted provided petitioner clears the arrears of rent without other charges and interest within a reasonable time, i.e., on or before 31.5.2008. If payments are made as above, no collection

charges also will be recovered from the petitioner. However, I make it clear that the above concession is granted only on condition that petitioner clears the liability as above and on default waiver of interest and other charges granted will stand automatically cancelled without further orders from this Court. In that event, revenue authority will proceed to recover full arrears.

(C.N. RAMACHANDRAN NAIR)
Judge